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United States Senate

COMMITTEE ON THE JUDICIARY
WASHINGTON, DC 20510-6275

KOLAN L. DAVIS, *Chief Counsel and Staff Director*
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May 24, 2017

VIA ELECTRONIC TRANSMISSION

The Honorable John Kelly
Secretary
U.S. Department of Homeland Security
Washington, D.C. 20528

The Honorable Jay Clayton
Chairman
Securities and Exchange Commission
Washington, D.C. 20549

Dear Secretary Kelly and Chairman Clayton:

I am writing to request a review of potentially fraudulent statements and misrepresentations by Qiaowai Group, a Chinese company, and a second private company that calls itself the “U.S. Immigration Fund.” Both are involved in the development of One Journal Square in Jersey City, New Jersey, promoting the project to potential investors who seek to immigrate to the U.S. through the EB-5 investor visa program. The companies’ exact roles in the development are not entirely clear from public records, but both appear to be acting as a broker-dealer or agent for developers.¹

As I’m sure you are aware, recent press reports indicate that Qiaowai has touted its relationship with the current administration as a guarantee that potential EB-5 investors will receive lawful permanent residence in return for a no-risk investment in One Journal Square. “They said the president would make sure it came through” according to one investor. “They said there was no chance it could fail.”² One source detailed several such representations, all of

¹ See Ruwitch, John, *Reporters Barred from Kushner Companies’ Event in China*, May 8, 2017 Reuters available at <http://www.reuters.com/article/us-china-kushner-idUSKBN1830E7>.

² Drucker, Jesse and Hernandez, Javier C., *How to Woo Chinese Investors: With Visa Offers and the Trump Name*, NY Times May 19, 2017 available at https://www.nytimes.com/2017/05/19/business/kushner-trump-china-green-cards.html?_r=0 [hereinafter NY Times].

which were deleted from Qiaowai's web site after a Reuters' investigation.³ Reuters published its findings on May 12. It reports:

Reuters found six instances where Qiaowai offered such assurances in its online promotion of the One Journal Square project, and several other instances in promotion of previous projects.

*In one advertisement for the One Journal Square event in Shanghai posted on Chinese social media platform WeChat on May 5, Qiaowai wrote that the project "in a real sense **guarantees a permanent green card and the safety of the investment principal**, and we consider it one of the best of Qiaowai's 87 projects to date!" After Reuters asked Qiaowai for comment, the post was deleted.*

*In an April 27 post on its website, Qiaowai noted the project "**fully safeguards investors' green cards and funds**". This phrase -- and similar phrases on other parts of Qiaowai's website that mentioned the One Journal Square project -- were deleted after Reuters questioned Qiaowai about them.⁴*

The New York Times also reported that "Qiaowai promised safe investments and 'guaranteed' green cards, according to emails and text messages sent to clients."⁵

Such guarantees are problematic for several reasons, and the SEC and USCIS have coordinated to halt similar cases of investment fraud in the past.⁶ It is a fundamental rule of the EB-5 program that an applicant's investment must remain "at risk" up to the end of the alien's conditional permanent resident status, and a "guaranteed" investment fails this basic EB-5 test⁷; if Qiaowai is in fact guaranteeing the safety of the investment principal, all related EB-5 petitions should be rejected by USCIS. In addition, a petition submitted on the basis of such a guarantee seems to constitute misrepresentation of "a material fact . . . to procure . . . a visa . . . or admission to the United States or other benefit,"⁸ rendering the petitioner inadmissible to the United States pursuant to section 212(a)(6)(C)(i) of the Immigration and Nationality Act.⁹ Further, by guaranteeing green cards and assuring that funds are "safe," Qiaowai appears to be in violation of laws governing the offer and sale of securities, such as antifraud provisions of the federal securities laws.¹⁰ Specifically, Rule 10b-5 states that it is unlawful "for any person,

³ Harney, Alexandra, *Behind Kushner Companies, a Chinese Agency Skirts Visa-for-Investment Rules*, May 12, 2017 Reuters, available at <http://www.reuters.com/article/us-china-kushner-qiaowai-insight-idUSKBN1882EI>.

⁴ *Id.* (emphasis added).

⁵ NY Times.

⁶ SEC Investor Alert: Investment Scams Exploit Immigrant Investor Program, Oct. 1, 2013, available at https://www.sec.gov/oiea/investor-alerts-bulletins/investor-alerts-ia_immigrant.htm

⁷ USCIS Policy Memorandum 602-0083 at 5, May 30, 2013 available at [https://www.uscis.gov/sites/default/files/USCIS/Laws/Memoranda/2013/May/EB-5%20Adjudications%20PM%20\(Approved%20as%20final%205-30-13\).pdf](https://www.uscis.gov/sites/default/files/USCIS/Laws/Memoranda/2013/May/EB-5%20Adjudications%20PM%20(Approved%20as%20final%205-30-13).pdf).

⁸ *Id.*

⁹ INA § 212(a)(6)(C)(i); 8 USC § 1182(a)(6)(C)(i).

¹⁰ See, e.g., 15 USC § 78j; 17 CFR § 240.10b-5.

directly or indirectly. . . to make any untrue statement of a material fact. . . in connection with the purchase or sale of any security.”¹¹

While Qiaowai has been marketing One Journal Square as a sure thing that cannot fail, the U.S. Immigration Fund has been fighting a rear-guard action in D.C., to prevent much needed reforms of the EB-5 program. According to one report, the Fund “was at the forefront of efforts to stop an overhaul of the EB-5 program in 2015 and 2016,”¹² contributing close to one million dollars to lobbying efforts.

Given all of these concerns, a closer look at Qiaowai Group and the U.S. Immigration Fund are clearly warranted, as reports suggest both companies have long employed questionable practices. Accordingly, I request that you answer the following questions no later than June 7, 2017:

1. It appears the information regarding green card and no-risk guarantees violates our immigration laws.
 - a. Does the same information suggest a possible violation of any U.S. securities law?
 - b. If the answer is yes, do you plan to investigate, or to take any other action? Please explain.
 - c. If not, please explain why the possible legal violation does not warrant further investigation or action.
2. Qiaowai Group advertises that One Journal Square is its 87th EB-5 program.¹³ Has your agency now, or under the Obama administration ever investigated Qiaowai Group, to date?
 - a. If yes, what were the results of such investigation?
 - b. If no, please explain why not.
3. Is the Qiaowai Group considered a broker-dealer for EB-5 investment purposes under section 15 of the Securities and Exchange Act of 1934? If not, are they exempt from the requirement? Please explain the basis for the exemption and answer:
 - a. Does the Qiaowai Group have an office location in the United States?
 - b. Does the Qiaowai Group conduct any business in the U.S.? If yes, please explain.
 - c. Has the Qiaowai Group ever had an equity ownership interest in any U.S. business and/or any EB-5 regional center, business, or project? If

¹¹ §240.10b-5(b).

¹² NY Times.

¹³ Ruwitch, *supra note* 1.

yes, please provide detailed information on their ownership interest, including the names of businesses, regional centers, and principals.

4. Is the private company named “the U.S. Immigration Fund” considered a broker-dealer for EB-5 investment purposes under section 15 of the Securities and Exchange Act of 1934? If not, are they exempt from the requirement? Please explain the basis for the exemption and answer:
 - a. Has your agency now, or under the Obama administration, ever investigated the U.S. Immigration Fund, or any of its owners?
 - b. If the answer to question 4.a. is yes, please provide the basis for investigation, and any conclusions, analysis, or other outcome.
5. Please provide documentation of any investigation into, or complaints you have received regarding, either of the companies mentioned in questions 3, and 4, and/or any owners, officers, board members, or agents of those companies.

If you cannot fully respond to each and every request for set forth above, please identify the specific item requested to which you cannot fully respond and explain why you cannot respond. Thank you in advance for your cooperation with this request. If you have any questions, please contact Brad Watts or Katherine Nikas of my Judiciary Committee staff at (202) 224-5225.

Sincerely,



Charles E. Grassley
Chairman
Senate Committee on the Judiciary

cc: The Honorable Rex Tillerson
Secretary
U.S. Department of State

cc: The Honorable Dianne Feinstein
Ranking Member
Senate Committee on the Judiciary